

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 247 of 1993

WITH

CIVIL APPLICATION No 1099 of 1996

For Approval and Signature:

HON'BLE MR.JUSTICE D.N.PATEL

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

AHMEDABAD TAMIL WELFARE EDUCATION TRUST- THROUGH
Versus
P SHRI RAMAN

Appearance:

1. Special Civil Application No. 247 of 1993
MR DM THAKKAR for Petitioner No. 1-1/5
MR MN DEVNANI FOR
MR YOGESH S LAKHANI for Respondent No. 1
MS ARCHNANA RAVAL AGP No. 2
MS SEJAL SUTARIA FOR
MR VH DESAI for Respondent No. 3-5
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Date of decision: 04/05/2004

ORAL JUDGEMENT

1. The petitioner has preferred the present petition under Article 227 of the Constitution of India challenging the order dated 14th September 1992 passed by the learned Gujarat Secondary Education Tribunal, at Ahmedabad (hereinafter referred to as "the Tribunal" for the sake of brevity and convenience) in Applications No. 288 of 1989 & 735 of 1989 and Appeals No.3 of 1999 & 5 of 1990.

2. The petitioner - Ahmedabad Tamil Welfare Education Trust is running a school situated at Khokhara, Maninagar, Ahmedabad. The Principal of the said school namely Shri P. Sriraman was issued the charge sheet dated 8th May, 1989. The gist of the charges are referred hereinbelow.

"i. You are required to take 16 periods per week which you have not been taking at all since long.

ii. No time table of the School is maintained.

iii. Class Teachers observation Note Book are not maintained by you at all.

iv. You are not regularly attending the school and you come at any time and go away at any time."

3. The departmental inquiry was conducted and the report was given by the Inquiry Officer on 5th August, 1989, whereby the Inquiry Officer has come to a conclusion that all the charges levelled against the delinquent Head-Master are proved. The said report dated 5th August, 1989 is produced at Annexure-B to the memo of the petition. After discussing the threadbare evidence produced before the Inquiry Officer on the basis of the documentary evidence including that of lady peon and the letter written by her, the charges levelled against the delinquent Head-Master were held to be proved by the Inquiry Officer. If the charges are bifurcated, they were pertaining to; (i) management of the school affairs, maintenance of the time table, taking of periods and (ii) illicit relation by the delinquent Head-Master with the

lady employee of the petitioner's school. The letters written by the lady employee of the school dated 8th April, 1989 and 12th June, 1989 are produced at pages no. 61 and 58 respectively to the memo of the petition. Second important charge as to moral turpitude was also held to be proved against the delinquent Head-Master.

4. It is contended by the learned advocate appearing for the petitioner that on the basis of the report of the Inquiry Officer, services of the delinquent Head-Master were brought to an end by the order dated 3rd November, 1989 and subsequently by the order dated 27th March, 1990. (Said order was passed by the District Education Officer upon the direction of the Tribunal). It is further submitted by the learned advocate for the petitioner that the petitioner - trust is running the school which is enjoying privileges of minority institution and therefore, as such, there was no need to take approval of the District Education Officer. None the less, upon the suggestion/direction by the Tribunal, the petitioner trust applied for approval for termination of the services of the delinquent - Head-Master on the basis of the Inquiry Report. It is submitted by the learned advocate for the petitioner that the District Education Officer has also passed, the detailed order, approving the action of the management for termination of the services of the delinquent - Head-Master. In the said order the District Education Officer has discussed, at length, the nature of the charges and the proof thereof and after matching, both, the charges and the proof, the independent authority i.e. the District Education Officer has also arrived at the conclusion that the action proposed to be taken by the management i.e. dismissal of the delinquent Head-Master was, prima-facie, correct and therefore approval was granted by the District Education Officer. The said order of the District Education Officer is produced at page no.41 to the memo of the petition.

5. The learned advocate for the petitioner mainly contended that the observations and conclusions arrived at by the Tribunal in its order are diagonally opposite to the findings arrived at by the Inquiry Officer. The report of the Inquiry Officer is based upon the deposition of the witnesses and documentary evidence produced on the record. It is also contended by the learned advocate for the petitioner that the Tribunal was in search of better and additional evidence than what was produced before the Inquiry Officer. He has taken me to page 53 of the memo of the petition (internal page no. 7 of the order), which reads as under :

"When academic administration is in question a senior academic teacher should have been examined and reliance should have been placed on the time tables of every year log book of academic teachers, inspection report of the school etc."

6. It is further observed in the said order on the same page as under :

" "when the school had in its possession to the time table of all the years, inspection reports of all the years, it should have produced these documents to prove the defaults of academic administration. But nothing of the sort has been produced. Surprisingly, merely on the bare words of the managing trustee and the physical education teacher the inquiry officer has held that the delinquent H.M. was not taking full workload, was not maintaining time table, was not observing lessons, was not attending regularly and had not reported casual leaves when he was not present in the school."

7. It is contended by the learned advocate for the petitioner that the Tribunal was, thus, always in search of better and additional evidence than what was produced before the Inquiry Officer. In fact, the evidence produced before the Inquiry Officer were sufficient, enough and adequate to come to a conclusion that the charges levelled against the delinquent - Head-Master are proved especially when the delinquent - Head-Master himself has admitted before the Inquiry Officer that the time table which was produced at exh. 7 which was of the year 1987-88 was not showing any period of any subject of the delinquent - Head-Master which proves that the delinquent - Head-Master was not taking workload of 16 periods per week. It was further admitted by the delinquent Head-Master that the time table of the year 1988-89 was similar to 1987-88. Thus, even in the next year proper work-load was not accepted by the delinquent Head-Master. This aspect of the matter has been discussed at internal pages no. 4 and 5 of the report of the Inquiry Officer. Similarly, it was also stated by the delinquent Head-Master that he was not maintaining any logbook nor any observation book which he was required to keep.

8. It is contended by the learned advocate for the petitioner that the Tribunal ought to have arrived at a conclusion that on the basis of the existing evidence

which was sufficient, enough and adequate to prove the charges levelled against the delinquent Head-Master. It is also contended by the learned advocate for the petitioner that the delinquent Head-Master has not challenged the inquiry report before the Tribunal. Thus, the only question before the Tribunal was pertaining to quantum of punishment. It is also contended by the learned advocate for the petitioner that apart from the charges of management of the school affairs and the workload of the delinquent - Head-Master, most important charge against the delinquent Head-Master was of moral turpitude as referred in the charge-sheet. Both the letters of lady employee Mrs. Samudram dated 8th April, 1989 and 12th June, 1989 were proved before the Inquiry Officer. The said letters are at pages No. 61 and 58 to the memo of the petition. It has been observed in the report of the Inquiry Officer as under :

"Shri Chidambaram examined Mrs. Samudram, lady peon. The said lady peon in her statement has confirmed the exh. 2 having written in her hand-writing and also Exh.3 having written by her. She has reiterated and described her condition and the disadvantage which the Principal took. The most important factor is that she has stated very clear that the Principal was keeping physical relationship with her for the last three years and that the said relationship was maintained in the School Premises in the evening time. On pages 10 to 12 she has given the statement and the Principal was given opportunity to cross-examine her. The Principal in the cross-examination asked only one question and the question whether she will be able to read out exh. 2 written in the Tamil language or not, which Mrs. Samudram read it out in the presence of the Principal and Shri Chidambaram also in my presence. Shri Shriraman did not put any question to her with regard to serious allegations made against by the lady peon."

9. In the conclusion paragraph of the report of the Inquiry Officer it has been observed as under :

"With regard to the charge of lady peon Mrs. Samudram, Mrs. Mamudram has clearly stated about the physical relationship for three years and that too in the premises of the school. It is pertinent to note that Shri Shriraman has not put

a single question in the cross-examination to Mrs. Samudram and the defence witness that Shri Shriraman has examined, in which he has tried to make out a case that Mrs. Samudram was in habit of making such allegations, is of no avail from the fact that Shri Samudram's evidence is not convincing. Shri Shelvam in his cross-examination had to admit that she and her relative had gone to his place to beat him and the fact that he had not made any police complaint against her and also the fact that the matter was discussed in the meeting of the Trustee of this incident. Shri Shelvam admits that it is an apology, but some sort of writing was given by him to the Trustee for this incident. All these facts show that Shri Shelvam's evidence cannot be believed. Shri Shriraman, therefore, has failed to convince me with regard to the allegations made by the lady peon. Moreover, , it is a very serious matter for an educational institution in particular that such relations are kept with any lady-member in the school premises. The lady peon has given the written complaint and the incident of her attempt of committing suicide, her evidence, etc. are such that it is difficult to disbelieve her allegation."

10. The observations made by the Tribunal read as under :

"Merely a statement of the lady peon in the above state of affairs cannot be held to have the effect of proving to the hilt the charge of such a grave misconduct. When the charge is not specified in so many words in the charge sheet"

11. The aforesaid conclusion arrived at by the Tribunal is not tenable in the eye of law and the same is erroneous. Both the letters written by the lady employee of the school of the petitioner have been proved, by proving the contents, execution and signature and opportunity of cross-examination was also given to the delinquent - Head-Master. But nothing is not coming out from the cross-examination of Mrs. Samudram. In fact, the delinquent - Head-Master had thought it fit not to substantially cross-examine her as observed in the report of the Inquiry Officer. None the less, once both the letters were proved, the observation of the Tribunal as referred hereinabove is not correct evaluation of the report of the Inquiry Officer. The Tribunal was in

search of better and additional proof. It is a matter of pity and misfortune for the institution that the Tribunal has not appreciated and understood that the corroborative evidence are not available in such matter of illicit relation and that too after the school hours are over, as narrated by the lady employee of the petitioner's school. It was not fit for the Tribunal to go in search of better and additional evidence than her statement and deposition of the Inquiry Officer. Standard of evidence expected by the Tribunal is unnecessary too high in the departmental inquiry proceedings. Sufficient and ample was the evidence and material before, the Tribunal to arrive at conclusion, on the basis of the departmental proceedings that there were illicit relations between the delinquent Head-Master and the lady employee against her will, consent and wish. There was no need to turn deaf ear to the complaints made by the lady employee and rightly the Inquiry Officer had arrived at the conclusion that the charges levelled against the delinquent - Head-Master are proved. So far as the illicit relationship of the delinquent Head-Master with lady employee is concerned, without properly appreciating the existing evidence, the Tribunal had upset the conclusion arrived at by the Inquiry Officer and it is clear from the judgment of the Tribunal that the Tribunal was in search of further and additional evidence. In fact, in the civil proceedings i.e. in the departmental inquiry, level of proof tendered by the management is sufficient and adequate to prove the guilt of the delinquent Head-Master.

12. Learned advocate appearing for the respondent has mainly urged the ground of malafide against one trustee of the petitioner trust. It was contended by the learned advocate for the respondent that in the proceedings before the Charity Commissioner, one of the trustees namely Shri P. Chidambaram had raised objection against the delinquent Head-Master. The delinquent Head-Master wanted to have change in the name of the trusteeship of the petitioner-trust. The delinquent - Head Master, had applied to the Charity Commissioner to insert his name as trustee of the school. There was oppose by Shri P. Chidambaram. Ultimately, change was not allowed in favour of the delinquent Head-Master. Even by the Charity Commissioner, the delinquent was not allowed to be trustee of the petitioner trust. On that basis, it is averred by the learned advocate for the respondent, that Shri P. Chidambaram has unnecessarily got up false story against the delinquent Head-Master with malafide intention. This aspect of the matter has been approved by the Tribunal.

13. I have gone through the charges, report of the Inquiry Officer and the letters of the lady employee of the petitioner's school and I am of the opinion that the conclusion arrived at by the Tribunal as to malafide and colourable exercise of the powers by the Managing Trustee interference of this Court is uncalled for and unwarranted. The proceedings before the Charity Commissioner and the oppose made by the managing trustee namely Shri P. Chidambaram has nothing to do with the serious misconduct committed by the delinquent Head-Master especially of illicit relation with the lady employee of the petitioner's school since last three years with the contemporary proof of two letters dated 8th April, 1989 and 12th June, 1989 produced by her before the Inquiry Officer which have been proved by her. Plea of male fide taken by the respondent no. 1 appears to be an afterthought. The conclusion arrived at by the Tribunal is, therefore, erroneous, illegal and wrong.

14. Looking to the facts and circumstances of the case and the nature of the evidence presented before the Inquiry Officer both, oral as well as documentary, lead to the fact that the charges levelled against the delinquent Head-Master are proved and the conclusion arrived at by the Tribunal as to proof of the charges against the delinquent Head-Master is not legal, correct and proper. The Tribunal was constantly in search of better and additional evidence than what was existing, even in the case of illicit relation of the delinquent Head-Master with the lady employee of the petitioner's school. The Tribunal has gone to the extent that merely statement of the lady employee will not prove the charge levelled against the delinquent. But it may be noted that the lady employee has constantly stated that the Principal of the petitioner's school was having illicit relation with her since last three years after school hours were over in the school premises itself. Thus, the lady employee could not produce any corroborative evidence except her own two letters as well as her deposition. Sufficient opportunity of cross-examination was given to the delinquent Head-Master as evident from from the Inquiry Report that the delinquent had thought it fit not to substantially cross-examine the said lady employee. From the proof and evidence led by the management of the petitioner's school the charges are proved and the conclusion arrived at by the Tribunal is, prima facie, erroneous, illegal and improper.

15. Thus, both types of charges are proved. None the less, the order of reinstatement with full back wages has been passed by the Tribunal and therefore the back wages

were ordered to be paid from 1st December, 1989 till the date of the judgment i.e. 14th September, 1992 i.e. for 32 months without any work being done by the delinquent Head-Master. In the order passed by this Court dated 21st January, 1994 while granting interim relief, it has been observed as under :

"The petitioner is directed to hand over back the charge to the respondent no. 1 with immediate effect. The respondent no. 2 is directed to make necessary payments as to the salary of the respondent no.1 with effect from January, 1993. The respondent no. 2 shall make the payment of arrears within four weeks from today and shall go on regularly paying salary to the respondent no. 1 till the disposal of the petition. Just to protect the interest of the Government, it will be in the fitness of the matter to direct the respondent no. 1 to file an undertaking to the effect that if the petitioner succeeds in this petition, he shall pay back the salary which he has received for the period for which he has not worked, within the time prescribed by the court at the time of final disposal of the petition."

15. Thus, as observed hereinabove, if the petitioner succeeds, the respondent no. 1 - delinquent shall have to make repayment of the salary which has been received by him for the period for which he has worked.

16. Looking to the facts and circumstances of the case, deposition of the witnesses before the Inquiry Officer, documentary evidence produced by the management, and the report of the Inquiry Officer, I am of the opinion that the conclusion arrived at by the Tribunal is, prima facie, erroneous, perverse and illegal. From the face of the record, the charges of moral turpitude against the respondent no. 1 delinquent is proved. Despite this, the Tribunal was unnecessary constantly asking for additional or corroborative evidence which is generally not present, especially in the case of illicit relation in the school premises and that too after the working hours of the school hours.

17. I, therefore, in exercise of the powers conferred under Article 227 of the Constitution of India quash the order dated 14th September, 1992 passed by the Gujarat Secondary Education Tribunal in Applications No. 288 of 1989 & 735 of 1989 and Appeals No. 3 of 1990 & 5 of 1990 and consequently the respondent no. 1 is directed to deposit with the respondent no. 2 the amount of salary

which he had undertaken for repayment as per the order passed by this Court on 21st January, 1994, within a period of three months from the date of receipt of writ of this Court. Accordingly, the petitioner is allowed and rule is made absolute to the aforesaid extent, with no order as to costs.

18. In view of the above order passed in the main matter, Civil Application No. 1099 of 1996 does not survive and accordingly the same stands disposed of.

(D.N. Patel, J.)

_/\/Satwara/